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**AUSTIN, LEWIS & ROGERS**

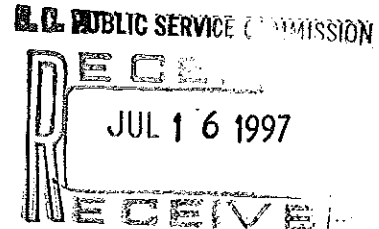
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(1940-1981)

July 16, 1997



The Honorable Charles W. Ballentine  
Executive Director  
Public Service Commission of SC  
111 Doctor's Circle  
Columbia, SC 29203

HAND DELIVERED

Re: Blue Ridge Electric Cooperative, Inc. vs. Duke Power Company, n/k/a  
Duke Power, a division of Duke Energy Corporation  
Docket No.: 97-153-E

Dear Mr. Ballentine:

Enclosed for filing, please find the original plus ten (10) copies of Duke's Motion to Dismiss and/or Motion for Summary Judgment. By copy of this letter I am serving counsel for the Petitioner.

If you should have any questions or need additional information, please do not hesitate to contact me. With kind personal regards, I am

Very truly yours,

A handwritten signature in cursive script that reads "Richard L. Whitt".

Richard L. Whitt

RLW:tct

cc: The Honorable Gary E. Walsh (w/enclosures)  
F. David Butler, Esquire (w/enclosures)  
Steven W. Hamm, Esquire (w/enclosures)

FILED  
7/17/97

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 97-153-E

ACCEPTED  
Legal  
7/17/97

S. C. PUBLIC SERVICE COMMISSION  
RECEIVED  
JUL 16 1997

IN RE: Blue Ridge Electric Cooperative, Inc., )  
)  
Petitioner, )  
)  
vs. )  
)  
Duke Power Company, )  
n/k/a Duke Power, a division of )  
Duke Energy Corporation, )  
)  
Respondent. )

**MOTION TO DISMISS  
AND/OR  
MOTION FOR SUMMARY  
JUDGMENT**

S. C. PUBLIC SERVICE COMMISSION  
RECEIVED  
JUL 16 1997  
UTILITIES DEPARTMENT

NOW COMES, Duke Power Company, n/k/a Duke Power, a division of Duke Energy Corporation, (hereinafter, "Duke" or "Respondent"), and moves the Public Service Commission of South Carolina (hereinafter, the "PSC" or "this Commission") for an Order of Dismissal or Summary Judgment as to the Complaint filed by the Petitioner, Blue Ridge Electric Cooperative, Inc. (hereinafter, "Blue Ridge" or "Petitioner"), which is presently pending in this docket, on the following grounds:

1. Beginning January 1, 1970, pursuant to the directives included in §58-27-640 S.C. Code Ann. (1976, as amended), the PSC began to assign service areas to electric suppliers in South Carolina.

2. In 1972, Blue Ridge, Duke and Haywood Electric Membership Corporation collaborated on a Joint Application and Joint Exhibit seeking a territorial

assignment from this Commission based on their mutual agreement as to areas to be assigned and left unassigned in Oconee County (See "IN RE: Joint Application for Territory Assignment in Oconee County, South Carolina, Docket No. 15,972, hereinafter "Joint Application.")

3. Attached to "Joint Application" was Exhibit A which depicted the proposed territorial assignments and lines to be protected from assignment pursuant to PSC Order. Duke and Blue Ridge were signatories to Exhibit A, which bears the legend, "[l]ine data approved as being correct as of June 25, 1970", and the signatures of an Assistant Vice President for Duke and the manager of Blue Ridge.

4. PSC Order No.: 16,394 was issued on September 5, 1972 approving the "Joint Application." Order No.: 16,394 relied on Exhibit A to establish the lines to be protected and stated, *inter alia*:

**"The verified Application and attached map, Exhibit A, indicate the areas in Oconee County to be assigned to each applicant and the areas to be left unassigned... NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Application is approved, and the areas in Oconee County situated more than three hundred (300') feet from the lines of any electric supplier and outside the corporate limits of any municipality are assigned to the respective applicants or designated unassigned, all as shown on Exhibit A incorporated herein by reference and made a part of this Order as fully as if set out herein" (emphasis supplied).**

5. The line, which is the subject of the dispute herein, (hereinafter, "line") is shown on Exhibit A discussed hereinabove, and was therefore, covered by Order No.: 16,394 issued on September 5, 1972, in the Territorial Assignment Docket. This "line" has been in place since April, 1969 (see Exhibit B to Duke's Response).

6. The "line" was designated by Agreement of the parties in the Joint Application as a part of Exhibit A, and was a line to be protected by the territorial assignment Application. As is shown in paragraph 4 hereinabove, the Commission's Order only assigned territory, "...situated more than three hundred (300') feet from the lines of any electric supplier... all as shown on **Exhibit A** incorporated herein by reference..." (emphasis supplied). This means that this Commission designated the area three hundred (300') feet from the lines of any electric supplier shown on Exhibit A, as unassigned, based on the mutual agreement of the parties to the "Joint Application." Pursuant to the authority granted this Commission under the Territorial Assignment Act (§58-27-640, S.C. Code Ann.), Order No. 16,344 was issued on September 5, 1972. It was not appealed or modified and is, therefore, binding on the parties to the Joint Application.

7. Since the three hundred foot (300') area around the "line" is unassigned, the customer in the instant case may choose his power supplier, pursuant to §58-27-620(iii) or (iv). Duke has earlier filed with this Commission, on May 2, 1997, an Affidavit of the Customer at dispute requesting service from Duke (see Exhibit C to Duke's Response).

This Motion is supported by the pleadings and files of this Docket, previous Dockets of this Commission, Affidavits on file and to be filed with this Commission and a Memorandum of Law to be filed.

Therefore, Respondent Duke is entitled to an Order Dismissing this Complaint. Petitioner is collaterally estopped from re-litigating this matter because the issue of ultimate fact was determined by a valid Order of this Commission in Docket No.: 15,972

and in Order No.: 16,394, which was based on a Joint Application of these parties or in the alternative, Duke is entitled to an Order Dismissing this Complaint because, based on the foregoing, there are no genuine questions of material fact present and Duke is entitled to an Order of Summary Judgment, as a matter of law, dismissing Petitioner's Complaint.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Rich L. Whitt". The signature is written in a cursive, flowing style.

---

William F. Austin  
Richard L. Whitt  
AUSTIN, LEWIS & ROGERS, P.A.  
P.O. Box 11716  
Columbia, SC 29211  
(803)256-4000

Jefferson D. Griffith, III  
Duke Power,  
A division of Duke Energy Corporation  
P.O. Box 1244  
Charlotte, NC 28201-1244

ATTORNEYS FOR RESPONDENT

Dated: July 16, 1997

Columbia, South Carolina

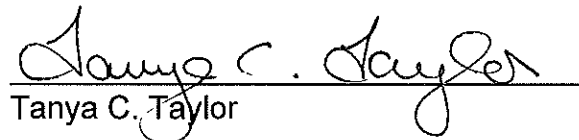
BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 97-153-E

IN RE:	Blue Ridge Electric Cooperative, Inc.,	)	
		)	
	Petitioner,	)	
		)	
	vs.	)	CERTIFICATE OF SERVICE
		)	
	Duke Power Company,	)	
	n/k/a Duke Power, a division of	)	
	Duke Energy Corporation,	)	
		)	
	Respondent.	)	
		)	

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I, the undersigned, an employee of Austin, Lewis & Rogers, P.A., do hereby certify that I have served the foregoing **Motion to Dismiss and/or Motion for Summary Judgment**, by causing a copy to be hand delivered to the following individual:

Steven W. Hamm, Esquire  
Richardson, Plowden, Howser, Carpenter & Robinson  
1600 Marion Street  
Columbia, SC 29201

  
Tanya C. Taylor

July 16, 1997

Columbia, South Carolina